



ORIGINAL

FILED

MAY 25 2021

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

1 CARL A. WESCOTT
2 8210 E. VIA DE LA ESCUELA
3 SCOTTSDALE AZ 85258
4 *in propria persona*
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6 +1 936 937 2688

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 CARL A. WESCOTT,

10 Plaintiff,

11 vs.

12 DAVID CROWE;
13 MIKE LYONETTE;
14 JEFF RAU;
15 COLIN ROSS;
16 BRAD MALCOLM;
17 MICHAEL JIMENEZ;

Civil Action No. 3:20-cv-06456-JD

**REQUEST FOR ENTRY OF
DEFAULT**

18 Comes now, Plaintiff Carl A. Wescott, *pro se*, hereby requesting that the Clerk enter a default
19 against the named Defendants, David Crowe, Mike Lyonette, Jeff Rau, Colin Ross, Brad Malcolm,
20 and Michael Jimenez, on the basis that the record in this case demonstrates that there has been a
21 failure to plead or otherwise defend as provided by *Fed R. Civ. P. Rule 55(a)*

22 On Friday, April 2nd, 2021, Judge James Donato issued an Order, beginning with these two
23 sentences:

24 **ORDER.** Plaintiff's request for leave to file a second amended complaint, Dkt.
25 No. [81], is granted. The second amended complaint at Dkt. No. [82] will serve
26 as the operative complaint.

REQUEST FOR ENTRY OF DEFAULT

1 At that point, the onus was on Defendants to file an Answer, or another Rule 12 Motion to Dismiss,
2 or other responsive pleading. Thirty (30) days past April 2nd, 2021 was May 2nd, 2021. Today is
3 Monday, May 24th, 2021, fifty-one (51) days after the Plaintiff's Second Amended Complaint (Dkt.
4 No. [82]) was approved, well past the deadline for Defendants to file their Answer or other responsive
5 pleading.
6

7 The Federal Rules of Civil Procedure provide, in Rule 55:

8 (a) ENTERING A DEFAULT. When a party against whom a judgment for affirmative
9 relief is sought has failed to plead or otherwise defend, and that failure is shown by
affidavit or otherwise, the clerk must enter the party's default.

10 The Plaintiff's affidavit certifying the facts above is attached (Exhibit A), and the docket also
11 supports the Plaintiff's allegations, showing that they are true.
12

13 Therefore, the Plaintiff respectfully requests that the Clerk of the Court enter the Default of
14 the above-named Defendants in this case at bar, as there has indeed been a failure to plead or
15 otherwise defend as provided by *Fed R. Civ. P. Rule 55(a)*.
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17

18 RESPECTFULLY SUBMITTED on Monday, May 24th, 2021
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20



CARL A. WESCOTT, *pro se*

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MICHAEL JIMENEZ;

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**EXHIBIT A: SWORN AFFIDAVIT
OF CARL WESCOTT, IN SUPPORT
OF PLAINTIFF'S REQUEST FOR
ENTRY OF DEFAULT**

I, Carl Wescott, hereby swear under penalty of perjury of the laws of California and of the United States of America, that the following facts are true, to the best of my memory, recollection, and belief:

1. I am 53 years old, and a resident of Scottsdale, Arizona.
2. I am competent to testify. Were I to be called to testify in this matter, my testimony would be as follows, and until that point, my written testimony is as such:
 - a. First, I hereby verify all the facts in Request for Entry of Default as being true.

**EXHIBIT A: SWORN AFFIDAVIT OF CARL A. WESCOTT, IN
SUPPORT OF PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT**

- 1 3. Specifically, I received notification of the April 2nd, 2021 Order by Judge James Donato via
2 email in early April, and just re-reviewed the Order. Thus, I have first-hand knowledge of the
3 Order.
4
5 4. I assume the Order is also in the docket.
6
7 5. I have not been served with an Answer of other responsive pleading by Defendants, nor have I
8 received notification from the Court that such an Answer has been filed.
9

10 FURTHER AFFIANT SAYETH NAUGHT

11
12 Monday May 24th, 2021

13
14 
15 CARL A. WESCOTT, *pro se*
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26 EXHIBIT A: SWORN AFFIDAVIT OF CARL A. WESCOTT, IN
SUPPORT OF PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT

CV-Certificate of Service (Service of Papers Other than Citation)

Instructions: Every notice, pleading, plea, motion, or request made to the court must be served on all other parties in person, by mail or courier, by fax, by e-mail with consent, or in another manner directed by the court. Pleadings and documents other than a citation may be served by a party to the suit, an attorney of record, a sheriff or constable, or any other person competent to testify.

Proof of such service must be evidenced by a certificate of service signed by a party or the party's attorney of record, or signed and verified if the service is made by any other person, and attached to the document filed with the Court.

CERTIFICATE OF SERVICE

I certify that this document was served on all parties to this lawsuit as follows:

Name of Document: REQUEST FOR ENTRY OF DEFAULT

Method of Service (include information for each party to the lawsuit served with the document):

☐ Personal Delivery:

Name of Party or Party's attorney of record or agent, if any: _____

Address: _____

Date delivered: _____

Person delivering document: _____

☒ Mail or Courier:

Name of Party or Party's attorney of record or agent, if any: % MR. TROY ROMERO, esq.

Address: ROMERO PARK, P.S., 16935 W BERNARD DR. #260, SAN DIEGO, CA

Date mailed: Monday May 24th 2021 Certified Mail Receipt No.: 92127

Courier: _____

Date of courier delivery: _____ Courier Receipt No.: _____

☐ Fax

Name of Party or Party's attorney of record or agent, if any: _____

Date and time fax sent: _____ Fax number: _____

☐ Email

Name of Party or Party's attorney of record or agent, if any: _____

Date and time email sent: _____ Email address: _____

Signed on 5/24/2021

[Signature]
Signature of Party or Party's Attorney of Record

Signed on _____

Signature of Person Providing Notice

(VERIFICATION REQUIRED IF SERVICE IS BY A PERSON OTHER THAN A PARTY OR PARTY'S ATTORNEY)

I declare under penalty of perjury that the information in this Certificate of Service is true and correct.

Signed on 5/24/2021

[Signature]
Signature of Person Providing Notice

Printed Name: CARL A. WEST

Address: 8210 E. Via de la Encina Scottsdale AZ

Date of Birth: 6/15/67 SSN

→ VIA THIRD PARTY MAILING/SERVICE SERVICE, DocSmiths